

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

**FIRST CALL INTERNATIONAL, INC.,**

*Plaintiff,*

**v.**

**S&B GLOBAL, INC.,**

*Defendant.*

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**CIVIL ACTION No.**

**4:23-cv-00199-P**

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**DEFENDANT’S UNOPPOSED MOTION FOR LEAVE TO SUPPLEMENT MOTION TO DISMISS WITH  
APPELLATE DECISION FROM KOREAN COURT OF APPEALS**

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**TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:**

Defendant S&B Global, Inc. (“S&B Global”) files this *Motion Unopposed for Leave to Supplement Motion to Dismiss with Appellate Decision from Korean Court of Appeals* pursuant to Local Rule 56.7, and would respectfully show the Court as follows:

**I. INTRODUCTION**

This lawsuit arises out of a 2009 business contract between First Call International, Inc. (“First Call” or “Plaintiff”) and S&B Global, which is governed exclusively by Korean law.

In 2020, S&B Global filed suit against First Call in Korea’s Busan District Court, Western Branch, 1<sup>st</sup> Civil Division, to obtain unpaid commissions under the business contract. This lawsuit was entitled *S&B Global Co., Ltd. v. First Call Int’l, Inc* (Case 2020 Gahap 100333 Contracted Sum), and the Honorable Judge Kim Se-hyeon, Presiding; the Honorable Judge Kim Do-wan; and the Honorable Judge Kim Dong-min heard the case and received evidence. On or about April 22, 2022, the Korean court issued a judgment resolving the entire case and finding in favor of S&B Global. ECF No. 15; Ex. C (Korean Judgment). First Call filed an appeal of the case on May 6,

2022. ECF No. 15; Ex. D (Korean Appeal).

On April 13, 2023, the Korean Court of Appeals issued its decision on First Call's appeal of the case. *See generally* Ex. A (Korean Appellate Decision) and Ex. B, Att. 1 (Convenience Translation).<sup>1</sup> This decision affirmed the Korean Judgment, dismissing all of First Call's claims against S&B Global and requiring First Call to bear litigation costs. Accordingly, S&B Global seeks to supplement its motion to dismiss with this information.

## II. PROCEDURAL HISTORY

First Call filed suit against S&B Global in Tarrant County District Court asserting breach of contract claims on November 22, 2022. *See generally*, ECF No. 15; Ex. E (Plaintiff's Original Petition). After being served in Korea, S&B Global timely removed this case to federal court. *See generally*, ECF Nos. 1 (Notice of Removal) and 6 (Affidavit of Dwayne U. Barrs, Jr.). On March 20, 2023, Plaintiff filed its First Amended Complaint which restated the causes of action arising from the 2009 business contract. *See generally* ECF No. 10. S&B Global filed *Defendant's Motion to Dismiss Plaintiff's First Amended Complaint Pursuant to Fed. R. Civ. P. 12(b)(2), Abstention Doctrine, and Forum Non-Conveniens*. ECF No. 15.

## III. ARGUMENT

S&B Global seeks leave to supplement its Motion to Dismiss with the appellate decision from the Korean Court of Appeals.

Granting this Motion would not prejudice any party in this case. S&B Global's Motion is

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<sup>1</sup> A convenience translation is attached hereto because a certified translation of the decision has not yet been received. S&B Global is working to obtain a certified Korean to English translation of the Korean Appellate Decision, and the certified translation will be included with any supplementation to Defendant's Motion to Dismiss.

neither motivated by bad faith nor any dilatory purpose. In addition to good cause, justice also requires the proposed supplementation based on the new facts and circumstances known to date.

Counsel has a “continuing duty to inform the Court of any development which may conceivably affect an outcome.” Fusari v. Steinberg, 419 U.S. 379, 391, 95 S. Ct. 533, 540, 42 L. Ed. 2d 521 (1975); *see also* Alvarez Najar v. Chertoff, No. 9:07-CV-150-TH, 2008 WL 11347966, at \*4 n. 7 (E.D. Tex. Dec. 5, 2008) (citing United States v. Shaffer Equip. Co., 11 F.3d 450, 457 (4th Cir. 1993) (“attorneys are expected to bring directly before the Court all those conditions and circumstances which are relevant in a given case.”)).

At the time S&B’s Global filed its Motion to Dismiss, First Call’s Korean appeal was, in fact, pending in Korea and Defendant affirmatively made representations to this effect. The April 13, 2023 decision from the Korean Court of Appeals makes it incumbent upon S&B Global to notify this Court of this development. Furthermore, the substance of the Korean Appellate Decision directly relates to S&B Global’s motion to dismiss.

#### IV. CONCLUSION

For the reasons set forth herein, S&B Global respectfully requests this Court grant *Defendant’s Unopposed Motion for Leave to Supplement Motion to Dismiss with Appellate Decision from Korean Court of Appeals*.

Respectfully submitted,

/s/ Dwayne U. Barrs, Jr.

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**S&B GLOBAL, INC.**

**CERTIFICATE OF CONFERENCE**

Pursuant to Local Rule 7.1, I certify that I conferred with Plaintiff's counsel before filing this motion. Plaintiff's counsel has no objection to the filing of this motion.

/s/ Dwayne U. Barrs, Jr.

**CERTIFICATE OF SERVICE**

On April 13, 2023, I electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. I hereby certify that I have served all counsel of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Dwayne U. Barrs, Jr.